

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 135 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

SHETH AMBALAL HIMATLAL

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

MR MANISH J. SHAH for MR JP SHAH for Petitioner
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 24/12/98

ORAL JUDGEMENT (per R. Balia, J.)

On two separate reference applications for A.Y. 1967-68 and 1968-69 one consolidated statement of case has been submitted by the Income Tax Appellate Tribunal Ahmedabad Bench 'C' at the instance of the assessee and following question of law has been referred to us for

opinion arising out of tribunal's order in I.T.A. Nos. 2267 & 2268/Ahd/72-73.

"Whether, on the facts and in the circumstances of the case, the tribunal was right in law in holding that the money recovered from the debtor was income of the assessee u/s 41(4) of the Income-tax Act, 1961?"

2. The facts in brief are that on 16.2.66 the assessee had received a sum of Rs. 1,18,000 and on 5.5.67 the assessee had received two sums, Rs. 57,630 and 14,542. The first payment relates to A.Y. 1967-68 and the other two payments have been received during the previous year relevant to A.Y. 1968-69. These amounts were received towards satisfaction of a decree of the civil court passed in favour of the assessee and in respect of debt which has already been claimed by the assessee as bad in earlier previous year and the same has been allowed. The ITO sought to add these receipts byway of the income of the years in question u/s 41(4) of the Income-tax Act as it stood at the relevant time. The assessee contested the addition, inter alia, on the ground that appeal against the decree was pending in higher courts and the amount which has been received by the assessee had been placed in control of a receiver. Therefore, according to him, until appeals are decided and the title does not vest finally in the assessee, no such amount or benefit has been received by him finally relating to a sum already allowed as deduction in earlier assessment year, so as to invite operation of sec. 41(4). The assessee has been unsuccessful until tribunal in his contention.

3. At the time of hearing it has been pointed out by learned counsel for the assessee that ultimately the decree in satisfaction of which the aforesaid amounts had been received became final in 1981 by a decision of the Supreme Court and the assessee was, on his own contention, liable to include the said amount in the income of the previous year relevant to the year of the judgment of the Supreme Court. However, because of some other pending proceedings in the Supreme Court, the same could not be included in the relevant assessment year and as there is no dispute about ultimate liability of the said amount to be included in the income of the assessee, he, in the circumstances, does not press for answer to the question referred by allowing it to be included in the income of A.Y. 1967-68 and 1968-69 respectively.

In view of aforesaid discussion, we decline to

answer the question referred to us and return the reference. There shall be no order as to costs.

(hn)